INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statute involved	2
Statement	2
Reasons for granting the writ	3
Conclusion	6
	15

CITATIONS

Allesandro v. *C. F. Smith Co.*, 136 F. (2d) 75	10
Baltimore & O. S. W. R. R. Co. v. *Cavanaugh*, 35 Ind. App. 32, 71 N. E. 239	14
Bubb v. *Missouri, K. & T. R. R. Co.*, 89 Kans. 303, 131 Pac. 575	14
Great Atlantic & Pacific Tea Co. v. *Morrissett*, 58 F. (2d) 991, affirmed, 284 U. S. 584	14
Holloway v. *H. G. Hill Co.*, No. 59034, Ch. Ct. Tenn	9
Johnson v. *Castner-Knott Dry Goods Co.*, No. 301, N. D. Tenn	9
Lane Drug Co. v. *Glascott*, No. 4814, N. D. Ohio	9
McNabb v. *Clear Springs Water Co.*, 239 Pa. 502, 87 Atl. 55	14
People v. *Transit Development Co.*, 178 App. Div. 288, 165 N. Y. Supp. 114	14
Truman v. *Kansas City, M. & O. R. R. Co.*, 98 Kans. 761, 161 Pac. 587	14
United States v. *American Trucking Assns.*, 310 U. S. 534	7
Veazey Drug Co. v. *Fleming*, 42 F. Supp. 689	11
Walling v. *American Stores Co.*, 133 F. (2d) 840	7, 9, 10, 11
Walling v. *Automatic Canteen Co. of Pittsburgh*, No. 2777, W. D. Pa.	8
Walling v. *Fox-Pelletier International Detective Agency*, No. 572, W. D. Tenn.	8
Walling v. *Goldblatt Bros.*, 128 F. (2d) 778	8, 10
Walling v. *Jacksonville Paper Co.*, 317 U. S. 564	5, 11
Walling v. *Mutual Wholesale Food & Supply Co.*, 46 F. Supp. 939	8
Walling v. *New Orleans Private Patrol Service*, No. 373, E. D. La.	8
Walling v. *Paramount Richards Theatres, Inc.*, No. 659, E. D. La.	8
Walling v. *A. H. Phillips, Inc.*, 50 F. Supp. 749	8, 10
Walling v. *Phillips & Buttorff Mfg. Co.*, No. 322, N. D. Tenn.	8
Walling v. *Phillips Petroleum Co.*, No. 185, N. D. Tex.	8
Walling v. *Ward Drug Co.*, No. 931, N. D. Tex.	8

572166—44——1

	Page
Walling v. *L. Wiemann Co.*, 138 F. (2d) 602	10
Walling v. *Fred Wolferman, Inc.*, No. 1694, W. D. Mo.	8
White v. *Jacobs Pharmacy Co.*, 47 F. Supp. 298	11
Federal Statute:	
Fair Labor Standards Act, c. 676, 52 Stat. 1060, 29 U. S. C., sec. 201:	
Sec. 3 (j)	5
Sec. 12	12
Sec. 13 (a) (2)	2, 7, 11
State Statutes:	
Ala. Code, 1940, ti. 51, secs. 620–629	13
Colo. Stat. Ann., 1935, vol. 4, c. 161, secs. 1–11	13
Del. Rev. Code, 1935, c. 6, sec. 145	13
Fla. Stat. Ann., 1941, secs. 204.01–204.16	13
Ga. Laws, 1937, no. 355, secs. 1–13	13
Idaho Sess. Laws, 1933, c. 113, secs. 1–15	13
Ind. Stat. Ann. (Burns, 1933), secs. 42–301, 42–313	14
Iowa Code, 1939, c. 329.5, secs. 6943.126–6943.141	14
Ky. Acts, 1940, c. 174, secs. 1–12	14
La. Gen. Stat. Ann., 1932, vol. 6, secs. 8664–8674	14
Md. Code Ann., 1939, vol. 2, art. 56, sec. 65	14
Mich. Comp. Laws (Mason Cum. Supp. 1940), vol. 5, c. 186a, secs. 9757–1—9757–13	14
Minn. Stat., 1941, vol. 1, secs. 328.01–328.16	14
Miss. Gen. Laws, 1936, c. 157, secs. 1–9	14
Mont. (Supp. to Rev. Code, 1935, c. 221, secs. 2428–2428.14	14
N. C. Pub. Laws, 1939, c. 158, sec. 162	14
S. C. Code, 1942, vol. 2, sec. 2556	14
S. D. Code, 1939, vol. 3, c. 57.34, secs. 57.3401–57.3407	14
Tex. Stat. (Vernon 1936), Penal Code, art. 1111d, secs. 2–11	14
W. Va. Acts (reg. sess. 1933), c. 36, secs. 1–12	14
Wis. Spec. Sess. Laws, 1937, c. 12, expired July 1, 1939	14
Miscellaneous:	
16 A. L. R. 539	14
96 A. L. R. 1351	14
Annual Report of Administrator, Wage and Hour Division, for 1939	6
U. S. Bureau of the Census, Census of Business, Retail Trade: 1939, Types of Operation	13
Instructions to Enumerators for Business and Manufacturers (1939)	13
Interpretative Bulletin No. 6, issued by the Wage and Hour Division, U. S. Department of Labor, December 1938, revised June 1941	6, 12
N. R. A. Codes of Fair Competition, vols. II, IV, V, XII	11, 12

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. —

L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

MAX HARRY BLOCK, AN INDIVIDUAL, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF BLOCK'S SHOE STORES

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of L. Metcalfe Walling, Administrator of the Wage and Hour Division, United States Department of Labor, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit entered in this case on November 19, 1943.

OPINIONS BELOW

The findings of fact and conclusions of law entered by the district court are printed at R. 223–226. The district court delivered an oral opinion,

not printed in the record, which is reported at 5 Wage Hour Rept. 494. The opinion of the circuit court of appeals (R. 471) and the dissenting opinion of Judge Garrecht (R. 473) are not yet reported.

JURISDICTION

The judgment of the circuit court of appeals was entered on November 19, 1943 (R. 481). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether employees employed in the central warehouse of a chain store system, through which goods move from outside the State to nineteen separate retail stores in three States, are "engaged in a retail or service establishment" and therefore exempt from the wage and hour provisions of the Fair Labor Standards Act.

STATUTE INVOLVED

The statute involved is the Fair Labor Standards Act, 52 Stat. 1060, 29 U. S. C., sec. 201 *et seq.* Section 13 (a), the interpretation of which is involved in this case, provides:

> SEC. 13. (a) The provisions of section 6 and 7 shall not apply with respect to * * * (2) any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in intrastate commerce * * *.

STATEMENT

This case arises upon a complaint (R. 2–7) filed by petitioner in the district court under Section 17 of the Fair Labor Standards Act, praying for an injunction directing respondent to cease violations of the overtime and record-keeping provisions of the Act (Sections 7 and 11). The facts, which are not disputed, may be summarized as follows:

Respondent owns and operates a chain of nineteen retail shoe stores, fourteen located in various cities in Washington, three in Oregon and two in Idaho (R. 40–41, 224). The stores sell annually over a million dollars worth of shoes, rubbers, gloves, shoe laces, and shoe polish (R. 50, 63, 80, 141). These goods are bought by respondent outside the States of Washington, Oregon, and Idaho, chiefly from manufacturers in eastern States, and are shipped in by railroad (R. 31, 83–86, 224, 274).

Entirely separate from the retail stores, defendant maintains in Seattle, Washington, a warehouse and central office (R. 40–41, 224). About 90 percent of the goods purchased in the eastern States and sold in the retail stores go first to this warehouse. They are brought to the warehouse from the railheads by a local transfer company. There they are weighed, checked, unpacked, sorted, repacked and shipped to the retail outlets. (R. 225, 324, 356, 105, 110, 161–162.) Only a

small part of the goods—about 10 percent—reach the warehouse shelves; 80 percent is reshipped to the retail stores immediately (R. 94, 95, 109–110, 275). Moreover, approximately 30 percent is shipped out of the State to defendant's stores in Oregon and Idaho (R. 266, 268, 275, 276).[1] Thus, the products handled by respondent move in a continuous interstate flow from the East to the Seattle warehouse and thence to retail outlets in Oregon and Idaho as well as Washington.

All the employees whose status under the Act is disputed here work in the Seattle warehouse and central office exclusively and not in the retail stores (R. 225). Some receive and check the incoming shipments (R. 107–108, 161–162, 278, 356–359); others are clerical and bookkeeping employees who post stock records and invoices, handle correspondence, take shipping instructions and keep other necessary accounts and records of the business (R. 159–167, 278, 361–362, 373–374); several are maintenance employees (R. 168–170).

Respondent does not pay for overtime work at one and one-half times the employees' regular rate of pay, in accordance with Section 7 of the Act, and he has failed to keep records required under Section 11 (R. 363, 366, 440–441, 448–449, 348, 280–285).

Upon the foregoing facts, the district court entered a decree dismissing the complaint

---

[1] The findings by the district court give 15 percent to Oregon and Idaho and 85 percent to Washington as the percentages (R. 225) but this figure conflicts with respondent's statements in answer to interrogatories, cited above.

(R. 227–228). The district court found (1) that "neither the defendant nor any of his employees is engaged in interstate commerce" as defined by the Act; and, alternatively, (2) that the employees are exempt under Section 13 (a) (2) because they are "engaged in a retail or service establishment" (R. 225–226).

On appeal the circuit court of appeals affirmed the decree by a divided court (R. 471, 473). All three judges assumed that the employees were employed in interstate commerce, pointing out that some of them were certainly so engaged (R. 472, 474).[2] The majority placed its decision on the ground that the warehouse and central office employees, although they did not work in any of the retail stores, nevertheless were "engaged in a retail or service establishment" and so exempt under Section 13 (a) (2); it held (R. 473)—

> Whether appellee's stores constitute a single establishment or whether each, in appropriate circumstances, is to be regarded as a separate establishment, is a question we need not consider. All we decide is that the services involved were a mere incident to and an integral part of the operation of each store in the group.

[2] Inasmuch as goods handled in the warehouse were shipped to other states, the employees also were engaged in producing for interstate commerce within the meaning of the definition contained in Section 3 (j) of the Act. In *Walling* v. *Jacksonville Paper Co.*, 317 U. S. 564, 565, it was conceded that employees in warehouses shipping across state lines come within the commerce coverage of the Act.

Judge Garrecht dissented, holding that the words "retail establishment" apply only to a store or similar place of business at which goods are sold at retail (R. 474 *et seq.*).

REASONS FOR GRANTING THE WRIT

1. The decision of the circuit court of appeals interpreting Section 13 (a) (2) raises a question of importance in the administration of the Fair Labor Standards Act of 1938.

Since 1938 the Administrator of the Wage and Hour Division has consistently taken the position in formal interpretative bulletins and in enforcement proceedings that the term "retail or service establishment" refers to a store or similar place of business at which goods are sold at retail (see Interpretative Bulletin No. 6, issued December 1938 (revised June 1941), paragraphs 33–37). In the 1941 revision of Interpretative Bulletin No. 6, he said (par. 37):

> The question has been raised as to the scope of the term "establishment" in the case of chain-store systems * * *. The exemption, however, does not apply to warehouses, central executive offices * * * or other non-retail selling units which distribute to or serve stores. These are physically separated establishments which do not have the characteristics of retail or service establishments.[3]

[3] The same explicit statement was made by the Administrator in his Annual Report to Congress for 1939, p. 21.

This bulletin, and the administrative practice under it, are based on the deliberate judgment of officials who were familiar with the legislative background and who in enforcing the Act were bound to interpret it expertly in the light of the practical competitive and other economic problems.

This administrative interpretation was entitled to receive great weight in the court below. See *United States* v. *American Trucking Assns.*, 310 U. S. 534. It was supported by the legislative history of Section 13 (a) (2) and by prior administrative, legislative and judicial treatment of chain store organizations (see pp. 11–13, *infra*). It had been sustained by the Circuit Court of Appeals for the Third Circuit (see *Walling* v. *American Stores Co.*, 133 F. (2d) 840). Nevertheless, the court below rejected the Administrator's view and held that employees in respondent's chain store warehouse were exempt from the wage and hour provisions of the Act.[4]

The question thus opened affects thousands of companies and their employees. The Census of Business, 1939, lists 6,969 chain store organizations. More than one-third of them reported that they operated separate warehouses or separate central offices. More than 50,000 employees

[4] No question is involved concerning the Section 13 (a) (1) exemption of employees engaged in a local retailing capacity.

were employed in central offices alone, 20,000 in warehouses alone, and about 40,000 in combined central offices and warehouses. The total pay roll amounted to more than $200,000,000, $79,000,000 of which was paid to employees in combined central offices and warehouses similar to the central offices and warehouse involved in the instant case. There is no way of knowing, of course, how many of these chains already comply with the Act voluntarily, but actually or potentially the question presented affects them all because their methods of doing business are basically the same.

Less significant but nevertheless indicative of the importance of the question is the volume of litigation dependent upon its answer. The Administrator now has pending more than a dozen suits which turn chiefly upon the issue presented here.[5] Additional files being reviewed in his

[5] *Walling* v. *Paramount Richards Theaters, Inc.*, Civ. No. 659, E. D. La.; *Walling* v. *Fox-Pelletier International Detective Agency, Inc.*, Civ. No. 572, W. D. Tenn.; *Walling* v. *New Orleans Private Patrol Service*, Civ. No. 373, E. D. La.; *Walling* v. *Goldblatt Bros.*, 128 F. (2d) 778 (C. C. A. 7) now awaiting trial on remand in N. D. Ill.; *Walling* v. *Fred Wolferman, Inc.*, Civ. No. 1694, W. D. Mo.; *Walling* v. *Automatic Canteen Co. of Pittsburgh*, Civ. No. 2777, W. D. Pa.; *Walling* v. *A. H. Phillips, Inc.*, 50 F. Supp. 749 (D. Mass.), pending on appeal to C. C. A. 1; *Walling* v. *Mutual Wholesale Food & Supply Co.*, 46 F. Supp. 939 (D. Minn.), pending on appeal to C. C. A. 8; *Walling* v. *Phillips Petroleum Co.*, Civ. No. 185, N. D. Tex. (Amarillo Div.); *Walling* v. *Ward Drug Co.*, Civ. No. 931, N. D. Tex.; Cf. *Walling* v. *Phillips & Buttorff Mfg. Co.*, Civ. No. 322, N. D. Tenn.; *Lane Drug*

offices with a view to enforcement action are being held up pending clarification of the question. The question is squarely raised in the instant case. Its decision would benefit employees, employers and the Government equally by ending much of this litigation.

2. The decision below is in conflict with the decision of the Circuit Court of Appeals for the Third Circuit in *Walling* v. *American Stores Co.*, 133 F. (2d) 840. The defendant in that case operated a large chain of retail stores covering several States; in addition it had eleven warehouses, bakeries and canneries. As in the present case, it was argued that the entire chain constituted a single retail establishment. The Third Circuit, however, rejected that contention and expressly approved the Administrator's interpretative bulletin by construing the words "retail or service establishment" to include only stores or similar places of business where goods are sold to customers, and to exclude separate non-selling units (see p. 6, *supra*). The rationale of the decision and its approval of the administrative interpretation cannot be reconciled with the decision of the Circuit Court of Appeals for the Ninth Circuit in the instant case.

Co. v. *Glascott*, Civ. No. 4814, N. D. Ohio. Among the employee suits involving the question are *Johnson* v. *Castner-Knott Dry Goods Co.*, Civ. No. 301, N. D. Tenn.; *Holloway* v. *H. G. Hill Co.*, Civ. No. 59034, Chancery Court of Davidson Co., Tenn.

In the court below, Judge Healy suggested that the *American Stores* case was distinguishable from the instant case because the American Stores Company produced or processed goods at its warehouses on an extensive scale (R. 473). But this is an accurate description of only some of the warehouses involved in the *American Stores* case; others did no manufacturing or processing and performed precisely the same functions in the American Stores chain as the warehouse involved in this case performed in the Block chain. Consequently, the decisions, as well as the reasoning of the two circuit courts, cannot be reconciled.[6]

[6] *Walling* v. ~~*Goldblatt Bros.*~~ *L. Weinberg Co.*, ~~128~~ 138 F. (2d) ~~778, 783~~ 602 (C. C. A. 7), ~~is~~ is in accord with the decision below. We are filing a petition for a writ of certiorari in that case raising not only the question raised here but also the equally important question whether the employees in a chain store warehouse serving stores *in a single State* are engaged in commerce within the meaning of the Act. On the other hand, in *Walling* v. *Goldblatt Bros.*, 128 F. (2d) 778, 783 (C. C. A. 7), the same court said:

> Further we think that such elimination of applicability was intended to include only ordinary retail stores, Fair Labor Standards Act of 1938 § 13 (a) (2), 29 U. S. C. A. § 213 (a) (2), and not a great establishment shipping goods out of the state to two of its important outlets. *Fleming* v. *American Stores Co.*, D. C., 42 F. Supp. 511. * * *

The opinion in *Allesandro* v. *C. F. Smith Co.*, 136 F. (2d) 75 (C. C. A. 6) is not clear but apparently it rests upon a ruling as to coverage and not as to the scope of the exemption.

The decisions in the district courts are also in conflict. The decision in *Walling* v. *A. H. Phillips, Inc.*, 50 F. Supp.

3. The decision below is erroneous. The legislative history of Section 13 (a) (2) makes it abundantly clear that the purpose of Congress was to exempt small retail stores which might otherwise be covered as a result of their location near State lines,[7] and not to exclude from the benefits of the Act employees engaged in chain store warehouses that in fact perform the functions of a wholesaler. The words of Section 13 (a) (2) likewise reveal this purpose. In ordinary usage an "establishment" is a place of business; a retail establishment is a place where goods are held and sold to small consumers. In business usage also this is the accepted meaning. Under sundry N. R. A. Codes of Fair Competition drafted by industry committees, chain store warehouses and other non-retail selling units were regarded as separate and distinct from the retail outlets.[8] The Bureau of the Census regards each physically segregated unit of a chain store organi-

749 (D. Mass.), follows the decision in the *American Stores* case but two other district courts have reached the same result as the court below. *White* v. *Jacobs Pharmacy Co.*, 47 F. Supp. 298 (N. D. Ga.); *Veazey Drug Co.* v. *Fleming*, 42 F. Supp. 689 (W. D. Okla.).

[7] See *Walling* v. *Jacksonville Paper Co.*, 317 U. S. 564, 571.

[8] See N. R. A. Codes of Fair Competition, vol. IV (Dec. 1933), pp. 457–472; N. R. A. Codes of Fair Competition, vol. V (Jan. 1934), pp. 1–15. The Food and Grocery Chain Stores of America—since 1937 the National Association of Food Chains—was one of the national associa-

zation as a distinct establishment.[9] The legal usage is the same. It is beyond question that "establishment" as used in the child labor section of the Act (Section 12) refers to each separate warehouse or store and not to the entire business of the chain. And both legislatures and courts have rather uniformly treated each unit of a chain as a distinct establishment even in such

---

tions which participated in the formulation of the Wholesale Food and Grocery Code. *Id.* at 4.

The Retail Food and Grocery Trade Code defined "Food and Grocery Retailer" as "any individual or organization engaged wholly or partially in the retail food and grocery trade." "Retail Food and Grocery Establishment" or "establishment" was defined as "any store, department of a store, shop, stand, or other place where a food and grocery retailer carries on business." Cf. Interpretative Bulletin No. 6, par. 37.

The Code of Fair Competition for the Retail Tobacco Trade, approved June 19, 1934, provided that "chain of stores" included "central distributing depots from which individual units are serviced" (Art. II, section 13) while "retail tobacco establishment" or "establishment" was confined to places of business where tobacco products were sold. See N. R. A. Codes of Fair Competition, vol. XII, pp. 41–56, Art. II, secs. 13 and 14. In the Code for the Retail Trade, approved October 21, 1933, "establishment" was defined in terms of a place of business (such as "store, shop, stand"), engaged in selling. See N. R. A. Codes of Fair Competition, vol. II, pp. 30–42. The National Council of Shoe Retailers was one of the national associations which participated in the formation of the Retail Trade Code. *Id.* at 28.

[9] The Bureau of the Census of the United States Department of Commerce, adopting the "establishment" as the basic unit in compiling census reports on manufacturing, wholesaling, and retailing, has defined "establishment" as

varied fields as taxation,[10] fire prevention, child labor, and hours of employment.[11]

In view of the purpose of Section 13 (a) (2) there can be little doubt that "establishment"

"the place where the business is conducted" (see Instructions to Enumerators for Business and Manufacturers (1939), Sixteenth Decennial Census of the United States, p. 22; also, U. S. Bureau of the Census, Census of Business, Retail Trade: 1939, Types of Operation, p. 3) and draws a sharp distinction between "establishment" and "organization" or "company." See, e. g., Census Forms (1939), Form 10, used by multi-unit organizations to report data concerning central administrative offices, chain-store warehouses, etc.; Form 21 (retail schedule); Form 31 (wholesale schedule). The Census regards each store, office, warehouse, manufacturing or processing plant, or other physically segregated unit of a chain-store organization as a separate "establishment." Only places of business (stores) engaged in retail selling are considered "retail establishments." See Instructions to Enumerators for Business and Manufacturers (1939), Sixteenth Decennial Census of the United States, p. 17; and U. S. Bureau of the Census, Census of Business, Retail Trade: 1939, Types of Operation, p. 3. Other units of multi-unit organizations are classified as manufacturing establishments, wholesale establishments, or in a special category depending upon the functions performed. See Instructions to Enumerators, etc., *supra*, pp. 22, 90–116. They are nowhere classified as retail establishments. In fact, chain-store warehouses and central-buying offices "maintained apart from the stores" are specifically excluded. U. S. Bureau of the Census, Census of Business, Retail Trade: 1939, Types of Operation, p. 4.

[10] See Ala. Code (1940), ti. 51, secs. 620–629; Colo. Stat. Ann. (1935), vol. 4, c. 161, secs. 1–11; Del. Rev. Code (1935), c. 6, sec. 145, p. 59; Fla. Stat. Ann. (1941), secs. 204.01–204.16; Ga. Laws (1937), no. 355, secs. 1–13, p. 75; Idaho Sess. Laws (1933), c. 113, secs. 1–15; Ind. Stat. Ann. (Burns,

was used there with this settled meaning. But were the matter doubtful, the consistent administrative interpretation would be determinative. See *United States* v. *American Trucking Associations, supra.*

1933), secs. 42–301—423–313; Iowa Code (1939), c. 329.5, secs. 6943.126–6943.141; Ky. Acts (1940), c. 174, secs. 1–12; La. Gen. Stat. Ann. (1932), vol. 6, secs. 8664–8674; Md. Code Ann. (1939), vol. 2, art. 56, sec. 65; Mich. Comp. Laws (Mason Cum. Supp. 1940), vol. 5, c. 186a, secs. 9757–1—9757–13; Minn. Stat. (1941), vol. 1, secs. 328.01–328.16; Miss. Gen. Laws (1936), c. 157, secs. 1–9; 1939 Supp. to Mont. Rev. Code 1935, c. 221, secs. 2428–2428.14; N. C. Pub. Laws (1939), c. 158, sec. 162; S. C. Code (1942), vol. 2, sec. 2556; S. D. Code (1939), vol. 3, c. 57.34, secs. 57.3401–57.3407; Tex. Stat. (Vernon 1936), Penal Code, art. 1111d, secs. 2–11; W. Va. Acts (reg. sess. 1933), c. 36, secs. 1–12; Wis. Spec. Sess. Laws (1937), c. 12, expired July 1, 1939. Compare *Great Atlantic & Pacific Tea Co.* v. *Morrissett*, 58 F. (2d) 991 (E. D. Va.), affirmed 284 U. S. 584.

[11] See 16 A. L. R. 539 and 96 A. L. R. 1351 for a compilation of cases decided under these statutes, including numerous cases turning on the meaning of "establishment." In applying these statutes several courts have indicated clearly that the "establishment" contemplated is a physical place of business—the mill, workshop, or factory—and have, accordingly, held physically segregated units of a multi-unit, integrated enterprise a separate "establishment." See *Bubb* v. *Missouri, K. & T. R. R. Co.*, 89 Kans. 303, 305, 131 Pac. 575 (1913) (carpenter shop of railroad company housed in separate building); *Truman* v. *Kansas City, M. & O. R. R. Co.*, 98 Kans. 761, 764–765, 161 Pac. 587, 588–589 (1916) (car repair shop of railroad company). See also *Baltimore & O. S. W. R. R. Co.* v. *Cavanaugh*, 35 Ind. App. 32, 71 N. E. 239 (1904); *People* v. *Transit Development Co.*, 178 App. Div. 288, 165 N. Y. Supp. 114 (2d dept. 1917); *McNabb* v. *Clear Springs Water Co.*, 239 Pa. 502, 87 Atl. 55 (1913).

CONCLUSION

It is respectfully submitted that this petition for a writ of certiorari should be granted.

CHARLES FAHY,
Solicitor General.

DOUGLAS B. MAGGS,
Solicitor of Labor.

FEBRUARY 1944.

U. S. GOVERNMENT PRINTING OFFICE: 1944